

IN THE MATTER OF	:	BEFORE THE
HARRY G. PIRRUNG, JR. &	:	HOWARD COUNTY
LINDA M. PIRRUNG,	:	BOARD OF APPEALS
T/A T.W. BOYS CO., INC.	:	HEARING EXAMINER
Petitioners	:	BA Case No. 08-039C

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DECISION AND ORDER

On December 1, 2008 and February 4, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Harry G. Pirrung, Jr. & Linda M. Pirrung, t/a T.W. Boys Co., Inc., for a retroactive Home-Based Contractor conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, filed pursuant to Section 131.N.27 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

William Erskine, Esquire, represented the Petitioners. Harry Pirrung, Kenneth Pope, Joyce Jackson, Sarah Higgins, and Charles Crovo, Sr. testified in support of the petition. David Mister, Esquire, represented Opponents Ralph Van Wey and Susan Van Wey. Ralph Van Wey testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 5th Election District on the west side of Addison Way about 600 feet north of Justifiable Court and 200 feet south of I-70. It is referenced on Tax Map 08, Grid 15, as Parcel 173 and is also known as 14777 Addison Way.
2. A shared asphalt driveway accessed from Addison Way provides initial access to the 8.04-acre Property. This driveway runs west for about 460 feet, and then turns north into the Property for about 300 feet, when it becomes a circular driveway (the turnaround). Just to the west of the turnaround is a single-family detached dwelling. Beyond the turnaround, the paved portion of the driveway ends at a rectangular (personal) parking area in front of a one-story metal prefabricated building. The now stone and gravel driveway loops to the west and north side of the metal prefabricated building.
3. The 25-foot high, L-shaped metal prefabricated building is situated about 30 feet from the east property line at its closest point and about 57 feet at its farthest.
4. According to the narrative supporting of the conditional use petition, the Petitioners use the metal prefabricated building partly used for their general contractor business and partly for personal use. The northern section is about 100 feet by 125 feet deep (12,500 sq. ft.). The 7,586-sq. ft. area comprising the general contractor business is stated as being used for the storage of equipment and materials. The business also includes two outside areas, a 12' x 12' (144 sq. ft.) fenced area containing the dumpster and dumpster pad, and 1,360 sq. ft. parking area on the

building's south side. The stated total area of the general contractor use is 9,090 square feet. A 760-square foot portion of the prefabricated building is designated as a personal equipment area, where the Petitioners store a tractor, lawn care and tree care equipment. According to the Conditional Use Plan and narrative, the building's front section is a 1,440 square-foot personal wood shop

5. The Property is predominately wooded to the west of the dwelling and metal prefabricated building and to the east of the paved portion of the driveway. There is a narrow tree line between the metal prefabricated building and several properties along the eastern lot line, including eight mature Leland Cypress trees, which are planted parallel to a portion of the metal prefabricated building's east side.

6. Vicinal Properties. All adjacent properties are also zoned RC-DEO. The eastern abutting Parcels 76, 206, 77, and 147, which have direct access to Addison Way, are each improved with a single-family detached dwelling sited in each parcel's eastern (front) section. The closest dwelling to the Property, on Parcel 206, is about 225 feet from the Petitioners' property line. The rear portion of Parcel 75 to the Property's north and west is encumbered with an environmental preservation easement.

The 6.59-acre Parcel 138 to the Property's south is improved with a single-family dwelling situated about 350 feet from the Petitioners' dwelling. The 7.3-acre Parcel 134 to the Property's southwest (the Van Wey residence) is improved with several structures situated more than 500 feet from the prefabricated building and to the west and south of the Property's western woods.

The 43-acre, non-abutting Parcel 386 to the Property's west is encumbered with an environmental easement. Parcels 138, 134, and 384, are all accessed via the shared driveway.

7. Roads. Addison Way has one travel lane in each direction and about 12 feet of paving within a variable width right-of-way. Addison Way terminates in a cul-de-sac along Parcel 75's frontage, about 60 feet south of I-70. The posted speed limit is 25 miles per hour and 15 miles per hour on curved portions.

8. Water and Sewer Service. The Property is served by private well and septic facilities.

9. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Rural Conservation." The General Plan Transportation Map depicts Addison Way as a local road.

10. The Petitioners are seeking retroactive conditional use approval for a home-based contracting operation. According to the petition narrative, the home based contracting operation involves the design and erection of metal prefabricated buildings and states "[a]s such virtually all work related to the business occurs either inside of the existing structures or off-site at a customer's location."

11. The business employs four full-time employees and one part-time employee. The business uses three commercial trucks: a flatbed F550 truck, a 16-foot trailer, and a commercial van. According to the petition narrative, tractor-trailers make infrequent materials and supplies deliveries to the site. The stated hours of operation are 6:30 a.m. to 6:30 p.m., Monday through Saturday and occasionally on Sundays.

12. Harry Pirrung testified that T.W. Boys, Inc. is a general contracting business doing both light commercial and residential work for some 33 years. He was engaged in the general contracting business in 1975, when he purchased the Property and built his home. He also stated that when he started the business on the site in 1982, the Department of License and Permits informed him that the only requirement necessary was a state construction license.

13. He stated he first constructed a pole building on the Property about thirty years ago, adding the larger building enclosure about 10 years ago.

14. In response to questioning about the nature of the on-site operation, Harry Pirrung stated that the building is used for storing materials and equipment. One area is used for routine maintenance of company vehicles. The front section of the building is a personal (hobby) woodshop. A large tractor-trailer makes infrequent deliveries to the shop. A propane truck makes deliveries to the business once or twice a year and a dumpster comes twice a month.

15. Describing the nature of the business during cross-examination, he stated that the company erects pre-engineered or prefabricated metal buildings, but does not erect prefabricated wooden structures. The company does commercial alternations, renovations, high-end residential additions, interior work, including kitchens and bathrooms). In the last six years, the company has pursued commercial and educational construction work, and complete turnkey work. He may make something for someone's house in the shop, and he has built, assembled, and prepared forms and stored them in the building. Responding to a question during rebuttal as to why the company needed such a large building, Harry Pirrung testified he uses the building to store small, general construction equipment, electrical supplies, bins with nuts and bolts, and drywall. He is

currently storing a backhoe inside the building, and a skid loader, and has an office in the building. The workshop is walled off except for a door in between.

16. In response to questioning related to his rebuttal testimony, Harry Pirrung testified to having once built or assembled forms on the Property and delivering them to job sites. In response to questioning about the petition narrative statement that the business sometimes assembles metal prefabricated forms on-site, he testified that the information was incorrect. The buildings are sent directly to the job site. He further testified that he sometimes cuts boards at the shop and does work at the shop that he cannot do elsewhere. When the business does an addition, they will build special cabinets in the shop. Sometimes he makes special wood products in the woodshop. Upon further questioning, he testified that he will use a drill press to drill holes for door hinges, and makes custom doors, special trim, moldings, doorjambs, and purchases raw wood material and cuts it in the shop.

17. He also stated that a tractor-trailer (apparently) or large delivery truck makes infrequent deliveries of large pieces of equipment, such as HVAC furnaces or heat pumps, compressors weighing several hundred pounds, or washers and dryers if the job site is not ready. He sometimes keeps something in the building until he needs it. A tractor-trailer will make twice-yearly lumber deliveries to his workshop and sometimes he purchases a skid of lumber that a diesel truck delivers to the building for later use.

18. During rebuttal, Harry Pirrung testified that he was unaware of any trailers hauling wooden buildings and that he did not manufacture wooden or metal buildings on the Property.

19. During cross-examination, Harry Pirrung stated that he does not have a Maryland home improvement contractor's permit.

20. During cross-examination, Harry Pirrung stated that he did not obtain permits for the original pole building because it was not a permanent structure, for the woodshop (Petitioners' Exhibit 1, Photograph #31) which he built first, or for the pre-engineered metal building, which he built about ten years ago (Petitioners' Exhibit 1, Photograph #27). He also stated that he did not obtain any permits because he did not think anyone would care.

21. Referring to the petition request to reduce the parking setback from 100 to 80 feet and the 50-foot building setback to 30 feet, he testified that he had picked the parking area based on the location of a fence along the common lot line. He has since planted evergreen trees along this property line, and in other areas. He is seeking the lesser setback because he does not want to move the building.

22. During cross-examination, Harry Pirrung testified to removing the fuel from underground fuel tanks and filling the tanks with concrete slurry without seeking a Maryland Department of the Environment permit.

23. During the proceeding, Harry Pirrung testified that he did not want to limit the hours, employees, or number of trips stated on the petition, given the nature of the construction business, and that he does not want to be restricted in what he can do. At the proceeding's conclusion, he agreed to a condition of approval that would bar tractor-trailers from making deliveries or pickups at the site and stated that he would agree to a restriction of the hours of operation as long as it does not adversely affect the business.

24. Neighbors Kenneth Pope, Joyce Jackson, Sarah Higgins, and Charles Crovo, Sr. testified that the operation did not create noise, dust, fumes, cause traffic problems, create any adverse effects or disturb them in any way.

25. Ralph Van Wey testified that his home lies about 480 feet from the Petitioners' prefabricated building and that he could see it from the interior of his house no matter the season. Over the last few years, he has frequently seen and heard trucks, tractor-trailers, and BFI refuse trucks coming in and out of the property at various times of the day. Some of these vehicles have had two-level high wooden buildings on them, which he stated had been fabricated on the Property. He hears a lot of noise, like heavy metal being thrown on the ground, or metal against metal and that the noise level was very high this spring. The noise made him and his wife not to want to be outside.

26. Mr. Van Wey objected to the petition for the following reasons: (1) the Petitioners unlawfully stored underground fuel on the Property; (2) the building's size creates an industrial look that is incompatible for the community; (3) the Petitioners did not obtain any permits for the business or the buildings; (4) 18-wheel vehicles haul away wooden buildings which the business constructs or assembles on the Property and; (5) the petition states the company erects pre-manufactured metal buildings on-site; (6) the hours and days of operation, which sometimes includes Sundays, are evidence that the use is too intense; (6) truck traffic makes driving along the narrow local roads unsafe, especially along the "S"-curve on Addison Way.

27. Mr. Van Wey testified to hiring an appraiser to assess the impact of the adjacent operation on the value of his property. The appraisal, Opponents' Exhibit 2, states the Van Wey property is "negatively impacted by at least 10% or more."

28. In response to cross-examination questioning, Mr. Van Wey testified to seeing trucks with completed wooden buildings on the shared driveway. The level of activity decreased after he filed a zoning complaint. During further questioning about his testimony that the Petitioners were engaged in manufacturing metal buildings on the Property. Mr. Van Wey referred to an email apparently sent to him by Petitioners' counsel stating that no manufacturing or fabrication would be performed on the property except as necessary.

29. The Petitioners introduced into evidence the exhibits as follows.

- (1). Vicinal map and 18 photographs of area buildings
- (2). Two photographs of T.W. Boys, Inc. commercial vehicles
- (3). Confirmatory corrective deed dated August 25, 2009, concerning title to area along the east Property line
- (4). Sixty-nine photographs of the Property, operation, and neighborhood
- (5). A June 12, 2008 letter to George Beisser, Department of Planning and Zoning Administration and Public Service Division Chief, from Patrick and Sarah Higgins, and Stephen and Carol Scheuch consenting to the Petitioners' use of portions of their shared driveway for the continued operation of T.W. Boys
- (6). A Microsoft Virtual Earth aerial photograph of the Property

30. The Opposition introduced into evidence the exhibits as follows.

- (1). A printout of Ralph's Van Wey's power-point presentation
- (2). A September 22, 2008 letter to Ralph Van Wey from A. Wayne Six, concerning market value appraisal of 14779 Addison Way Twelve photographs depicting the entire driveway ("Driveway Safety")

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows.

I. General Criteria for Conditional Uses (Section 131.B)

1. **Harmony with the General Plan.** Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as a "Rural Conservation" land use area. A home-based contractor is presumptively compatible and appropriate in an RC district if the Petitioner adduces evidence that the proposed use is contemplated or addressed in the General Plan through its land use policies or furthers its recommendations or if the use is positively evaluated under Sections 131.B.1.a and b.

The Nature and Intensity of the Use. Based on the criteria for the home-based contractor conditional use classification, as set forth in Part II, a home-based contractor conditional use is an operation run or owned by a property owner who resides on the site. The criteria limit the activities permitted under the use to: (1) parking and storing commercial vehicles on the

conditional use site, (2) storing commercial equipment and supplies in a combined interior and exterior area on no more than 5 percent of the lot area, or 10,000 square feet, whichever is less, and (3) making minor repairs to vehicles or equipment inside a building.

Also of import is the Zoning Regulations definition of "Home-Based Contractor"

The accessory use of a residential property for a contracting business which is operated by a person residing on the same lot and which includes at least one of the following activities: storage of equipment, visits to the lot by non-resident employees, or parking of more commercial vehicles than allowed under the provisions of the applicable zoning district for parking of commercial or unregistered motor vehicles. Home-based contractors may include building maintenance, construction, electrical, excavation, heating/air conditioning, home improvement, landscaping, painting, paving, plumbing, septic system, snow removal, well drilling, or similar businesses.

(Section 103. A.73).

Although the first sentence defines a home-based contractor as an "accessory" use meeting the requirements of Section 128.C.2 (which provides for home-based contractor accessory uses by permit, subject to certain criteria¹), the activities permitted are the same as

¹ Section 128.C.2 provides for a home-based contractor as a permitted accessory use in the RC and RR Districts, and on lots larger than two acres in the R-ED, R-20, AND R-12 Districts, provided that:

a. The site shall have at least 60 feet of frontage on a public road.

b. In addition to the commercial or unregistered vehicles which may be parked on the lot according to the accessory use requirements of the applicable zoning district, the following is allowed:

(1) In the RC and RR Districts, one additional commercial vehicle may be parked on lots larger than two acres.

(2) In the R-ED, R-20, and R-12 Districts, one additional commercial vehicle may be parked on lots larger than three acres.

c. Employees who do not live on the lot may visit the lot for the sole purpose of picking up or returning vehicles or equipment. Such trips shall be limited to:

(1) In the RC and RR Districts, no more than four trips per day for lots two acres or less, eight trips for lots larger than two and less than three acres, and twelve trips for lots of three or more acres.

(2) In the R-ED, R-20, and R-12 Districts, no more than eight trips per day for lots larger than one acre.

d. In addition to the employee visits allowed by Paragraph 2.c, one non-resident, full-time equivalent office employee, not to exceed two individuals, may work on site. Nonresident employees are not permitted to perform non-office functions (e.g. equipment repair, loading, etc.).

e. No nonresident employees shall be on the lot and no commercial vehicles or equipment shall be taken from or returned to the lot between 7:00 p.m. and 6:30 a.m.

those for a Home-Based Contractor conditional use set forth in Section 131.N.27, (which references the home-based contractor accessory use). In short, the Zoning Regulations tightly restricts the activities in which home-based contractors may engage on their residential property.

In my view, the nature and intensity of the contracting business currently operating on the site and proposed in the petition is inconsistent with what is contemplated and permissible under the Home-Based Contractor Conditional Use classification. The Petitioners use the site and building to store large heavy items or pieces of equipment that they cannot yet install or use on

f. The total area used for parking and storage of commercial vehicles, equipment and supplies, whether outdoors or indoors, shall be limited to the following:

- (1) In the RC and RR Districts, no more than two percent of the gross lot area or 5,000 square feet, whichever is less.
- (2) In the R-ED, R-20, R-12 and R-SC Districts, no more than two percent of the gross lot area or 1,000 square feet, whichever is less.

g. Parking and storage areas shall be restricted as follows:

(1) In the RC and RR Districts, supplies shall be stored within a building, except that mulch, compost, soil, sand, stone and other natural materials may be stored outdoors. Supplies stored outdoors must be screened from surrounding properties and roads by vegetation, fencing or other appropriate means. Equipment shall be either stored within a building or screened from surrounding properties and roads by vegetation, fencing or other appropriate means.

(2) In the R-ED, R-20, AND R-12 Districts, vehicles, supplies and equipment shall be parked or stored within a building, except that one commercial vehicle may be parked outdoors on lots of less than three acres, and two commercial vehicles may be parked outdoors on lots of three or more acres. Equipment and supplies may be stored on the commercial vehicles.

h. All storage areas shall meet the accessory structure setback requirements, except that structures used for parking, storage or loading of commercial vehicles larger than 5.0 tons gross vehicle weight, or excavating, paving or similar construction equipment shall be at least 50 feet from all property lines and outdoor parking or storage areas for these items shall be at least 100 feet from property lines.

i. No major repairs of vehicles or equipment shall be permitted on the lot. Major repairs include body work, engine rebuilding, painting, and similar activities.

j. Where two or more adjacent lots are under common ownership and used as a single homesite, home-based contracting uses may be located on a different lot than the principal dwelling, if the Director of Planning and Zoning determines that this will allow more effective screening to be provided by using existing features of the site, or will result in decreased impacts on neighboring lots due to noise, dust or fumes. Parking surfaces, fencing and landscaping may be installed; however, no new accessory building shall be constructed and no existing accessory building shall be enlarged unless located on the same lot as the principal dwelling.

k. A home-based contractor shall operate only upon approval of a permit by the Department of Planning and Zoning, based upon compliance with the requirements listed above. The permit application shall include a plot plan showing the location and dimensions of structures, parking and storage areas, screening, and driveways, and a description of the proposed use.

l. Certain home-based contractors which do not comply with the requirements of this section may be permitted as conditional uses, subject to the provisions of Section 131.N.27 and other applicable regulations.

the job site, including compressors weighing hundreds of pounds, washers and dryers, HVAC furnaces or heat pumps, a skid of lumber. Other activities which take place in the building and, apparently, the woodshop denoted in the petition as a "personal use" include: assembling or fabricating forms, cutting boards, drilling holes for door hinges, and making special wood products, cabinets, custom doors, special trim, moldings, and door jambs. The business also maintains an office in the building.

Giving weight to my conclusion that the nature and intensity of the proposed business does not comport with the Home-Based Contractor Conditional Use classification is the legislative history of ZB928R&M, the 1992 Comprehensive Zoning Plan ("CZP")². The 1992 CZP created new rural residential zoning districts outside the planned service area for public water and sewer. Importantly for this case, the CZP created the home-based contractor accessory use and what was then the home-based contractor "special exception" use classification. The ZB928R&M Technical Staff Report explained the purpose of these new uses.

. . . . [a] proposal to allow small contracting businesses to operate as accessory uses on residential lots in the RC and RR District. This proposal would accommodate very small businesses which are currently permitted only in the M-1 or M-2 Districts, or in some cases, in the B-2 Districts. With the restriction on the number of vehicles, storage area, hours of operation and employees, and the other requirements included in the proposed regulations, a small business would be able to operate out of a home without noticeably impacting the residential neighborhood. *A special exception category is also proposed to allow slightly larger home-based contractors in the RC and RR District subject to Board of Appeals approval.*

The proposals for home-based contractors are part of the broader effort to accommodate in Western Howard County the types of business traditionally

² Because the amendments predate the Zoning Regulations Amendment process, there was no "Council Bill." Instead, the Zoning Board adopted the regulations by Decision and Order dated September 18, 1992.

located in rural areas. *Larger contracting businesses which are not operated out of a home* would be permitted as a matter of right in the proposed BR District.

ZB928R&M Report, Page 9 (emphasis added.)³

The Zoning Board clearly intended the home-based contractor special exception (now conditional use) use classification to be a relatively modest business operated out of a home with a dedicated area for parking and storage. This intent is reflected in a later amendment to the home-based contractor conditional use classification. The original language limited the total area for parking and storage of commercial vehicles, equipment and supplies, whether exterior or interior, to five percent. As amended, the total area is 10,000 square feet or five percent, whichever is less.

In this case, the Petitioners operate their business not from home, but from an office in a separate structure.⁴ They also engage in activities not permitted by the use classification. Because the proposed uses are different in nature and more intense than permitted, I must conclude the proposed conditional use is inharmonious with the General Plan.

The size of the site in relation to the use. The Property is 8.04 acres in size. According to the petition and the petition narrative, the total area of the existing business operation is 9,090 square feet and includes a 7,586-sq. ft. area of the existing building, a 12' x 12' (144 sq. ft.)

³ ZB928R&M also created the BR (Business: Rural) District, which, according to the January 7, 1992 ZB928R&M Department of Planning Technical Staff Report (the "ZB928R&M Report"), was "oriented toward businesses which serve and are typically found in rural and agricultural communities." The BR (Business: Rural) commercial zoned permitted contractor storage facilities and welding shops. According to the ZB928R&M Report, the new regulations proposed in the 1992 CZP included several new provisions for home-based occupations, including the home-based contractor special exception.

⁴ I note the mailbox next to the "woodshop" door visible in Petitioners' Exhibit 4, Photograph 6.

fenced area containing the dumpster and dumpster pad, and a 1,360 sq. ft. parking area on the building's south side.

The testimony and evidence, however, convince me that the use is actually much larger than the 10,000 square foot maximum permitted, as set forth in Part II below. Petitioner Harry Pirrung testified that the business uses the woodshop to make a variety of wood products, including cabinets. When I scaled the square footages noted on the Conditional Use Plan, the square footages were greater than represented.

Further, the photographs comprising Petitioners' Exhibit 4 provide additional information about the size of the general contractor business, indoor and outdoor. Photograph 7 depicts a large paved area in front of a large gate, door, or garage-type opening on the south side of the main building. This paved area is not shown on the Conditional Use Plan. Photographs 27 and 32 depict what appears to be a larger access and business parking area than depicted on the Conditional Use Plan. Photograph 45 depicts one of the operation's trucks parked next to the area designated on the Conditional Use Plan as a personal equipment storage area. To the front of the truck is a portion of a wide gravel driveway area. However, the Conditional Use Plan shows this wide gravel driveway area as being wholly in front of the personal equipment storage area, which leads to the conclusion that this parking area should be included in the total square footage. Further, the business operation trucks and equipment visible in Opponents' Exhibit 1, Photographs 7-11 (Google aerial photographs) are parked on or near a concrete pad visible in Petitioners' Photograph 35, not in the designated business parking area.

Based on this evidence, the existing general contractor business site is significantly larger than 10,000 square feet. Consequently, I must conclude that the size of the site in relation to the use is inharmonious with the General Plan, it being contrary to what is permissible under the home-based contractor conditional use classification.

The location of the site with respect to streets giving access to the site. The site is accessed via a long shared driveway and an open-section, varying width, local road (Addison Way). Although it was Mr. Van Wey's testimony that these access conditions render the proposed use inharmonious with the area residential community, the conditional use classification anticipates that a home-based contractor site may be accessed from a shared driveway. As to Mr. Van Wey's testimony and evidence that Addison Way is inadequate to support the use, while Addison Way has an almost 90 degree bend and a series of banks on either side of the road just north of the bend, he presented no evidence of any traffic accidents related to the long-existing use. Additionally, Mr. Pirrung agreed to bar tractor-trailers from making deliveries or pickups at the site as a condition of approval. Consequently, I conclude that the location of the site with respect to streets giving access to the site accords with the General Plan.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed conditional use would be combined with a permitted use, a residential dwelling. The petition requests the Hearing Authority to reduce the parking setback from 100 to 80 feet and the 50-foot building setback to 30 feet and the Petitioners' have planted evergreen trees along a part of the building near the property line.

The area of the general contractor business operation is significantly larger than 10,000 square feet, and includes areas and uses which the petition and Conditional Use Plan do not depict. For these reasons, I must conclude the overall intensity and scale of uses on the site is inappropriate given the inadequacy of proposed buffers and setbacks.

2. **Adverse Effect.** Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed uses would have adverse effects in an R-20 district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioners have not met their burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a home-based contractor in an RC district.

a. **Physical Conditions.** The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

Because the Petitioners propose to use the Site for non-home-based contractor activities, I must conclude these adverse effects will be greater at the subject site than elsewhere in the zone or applicable other zones.

b. **Structures and Landscaping.** The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Because the Petitioners propose to use the Site for non-home-based contractor activities, I must conclude the adverse effects of the structure, regardless of any landscaping on the site, will hinder the use of adjacent land and structures more at the subject site than elsewhere in the zone or applicable other zones.

c. **Parking and Loading.** Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Because the evidence leads me to conclude the business operation includes parking areas, loading areas, and driveways which the Conditional Use Plan does not depict and which the petition narrative does not reference, I am unable to evaluate whether these areas are properly located and screened. The refuse area appears to be properly screened.

d. **Access.** The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The ingress and egress drives appear to provide safe access, with adequate sight distance.

II. Specific Criteria for Home-Based Contractors (Section 131.N.27)

The Hearing Authority may grant a Home-Based Contractor conditional use in the RC District if it meets the following criteria.

a. The number of commercial vehicles parked on the site shall be limited to one commercial vehicle for lots one acre or smaller, two commercial vehicles for lots between one and three acres, three commercial vehicles for lots at least three and not more than 20 acres, and five commercial vehicles for lots larger than 20 acres.

The site is 8.04 acres in size. The business uses three commercial trucks: a flatbed F550 truck, a 16-foot trailer, and a commercial van, in accordance with Section 131.N.27.a.

b. The area used for parking and storage of commercial vehicles, equipment and supplies, whether exterior or interior, shall be limited to no more than five percent of the area of the lot or 10,000 square feet, whichever is less.

As discussed and concluded above, the total area used for parking and storing commercial vehicles, equipment, and supplies exceeds 10,000 square feet. The proposed use does not comply with Section 131.N.27.b.

c. Structures used for the conditional use shall be at least 50 feet from lot lines and all outdoor parking or storage areas shall be at least 100 feet from lot lines, unless the Hearing Authority finds that a lesser setback is more appropriate and will not adversely affect neighboring properties due to visual impact, activity, noise, dust, fumes, or other cause.

The petition requests the Hearing Authority to reduce the parking setback from 100 to 80 feet and the 50-foot building setback to 30 feet. Because the activities associated with the current business operation on the Property do not fall within the activities permitted by the home-based

contractor use classification and the site exceeds 10,000 square feet, I must conclude a lesser setback is inappropriate.

d. The location and design of the operation shall be such that the use will not be a nuisance to residents of neighboring properties due to noise, dust or fumes. Particular consideration shall be given to the location of loading areas, parking and circulation areas, and driveways in relation to neighboring properties.

Because the activities associated with the business operation on the Property do not fall within the activities permitted by the home-based contractor use and the physical area of the proposed use includes loading areas, parking and circulation, or driveways not depicted on the Conditional Use Plan, I am unable to evaluate the proposed use under this criterion.

e. If the driveway providing access to the proposed site is shared with other properties, the petitioner shall demonstrate that the use will not result in damage to or deterioration of the shared driveway or in increased hazards to other users of the driveway.

The Petitioners adduced sufficient evidence to demonstrate the use will not result in damage or deterioration to the shared driveway or increased hazards to other users of the driveway.⁵

f. Parking and other outdoor uses shall be screened from adjoining properties and public roads by landscaping or other appropriate means.

Because the evidence demonstrates the existing business operation encompasses parking or other outdoor uses that are not depicted in the Conditional Use Plan, I am unable to assess whether these uses are appropriately screened.

⁵ Although prior hearing examiner decisions are not precedential, I denied a petition for a home-based contractor conditional use in Board of Appeals Case No. 07-031, where there was uncontroverted evidence of vehicular accidents along the shared driveway, dangerous traffic conditions, and documented accidents in the area of the MD 97 turnoff into that driveway.

g. New structures or additions to existing structures shall be designed to be compatible in appearance with other residential or agricultural structures in the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition.

The photographs in Petitioners' Exhibits 1 and 4 depict a light-colored metal building with a dark roof, which is compatible in appearance with area agricultural structures. However, because the structure is significantly larger than permitted by the home-based contractor conditional use classification, I must conclude it is incompatible in appearance with vicinal residential structures.

h. Minor repairs to vehicles or equipment shall be permitted, provided such activities take place inside a building. Bodywork, engine rebuilding, engine reconditioning, painting and similar activities shall not be permitted.

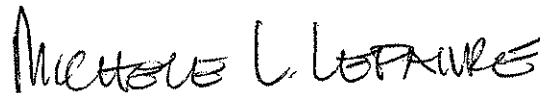
The petitions states the Petitioners will make only minor repairs to vehicles or equipment inside the building, in accordance with Section 131.N.27.h.

ORDER

Based upon the foregoing, it is this 6th day of March 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Harry G. Pirrung, Jr. & Linda M. Pirrung, T/A T.W. Boys Co., Inc., for a Home-Based Contractor conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 3/12/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing. G15